

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 02/13/02 Item.

File Number
CP 01-11-100

Application Type
Conditional Use Permit

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number(s)
244-03-039

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Caleb Gretton

Location: South side of Fallingtree Drive approximately 140 feet easterly of Flickinger Road

Gross Acreage: 1.11

Net Acreage: 1.11

Net Density: N/A

Existing Zoning: R-1-8 Residence

Existing Use: PG& E Tower with six wireless communication antennae

Proposed Zoning: No change

Proposed Use: Existing use to remain with the addition of three wireless communication antennas and associated equipment shelter

GENERAL PLAN

Completed by: Caleb Gretton

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Caleb Gretton

North: Single-family detached residential

A(PD) Residential

East: Single-family detached residential

A(PD) Residential

South: Single-family detached residential

R-1-8 Residence

West: Single-family detached residential

R-1-8 Residential

ENVIRONMENTAL STATUS

Completed by: Caleb Gretton

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Caleb Gretton

Annexation Title: Berryessa No.17

Date: December 03, 1971

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____
☐ _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT

Tom McAuliffe, Metro PCS
1080 Marina Village Parkway 4th Floor
Alameda CA 94501

OWNER

Pacific Gas and Electric Co.
Robert E. Schlegal,
77 Beale Street, Thirteenth Floor

DEVELOPER

Tom McAuliffe, Metro PCS
1080 Marina Village Parkway 4th Floor
Alameda CA 94501

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Caleb Gretton

Department of Public Works

No comment.

Other Departments and Agencies

See attached memorandum from Police Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Metro PCS, is requesting a Conditional Use Permit to allow the extension of an existing PG&E transmission tower from 105' 8" to 112' 10" feet for the installation of three wireless communication antennas, and the placement of an equipment shelter under the existing tower on a 1.11 gross acre site owned by Pacific Gas & Electric. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas in the R-1-8 Residence Zoning District.

The project site is a flat rectangular parcel within a residential neighborhood. The site is occupied by an existing PG&E utility tower. Nextel Wireless currently has six wireless communication antennas located at a height approximately 60 feet on the tower with associated equipment located adjacent to the base of the tower. The site is bounded by single-family detached residential uses on the north, south, east and west.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

Project Description

The proposed project consists of the extension of an existing PG&E utility tower from 105'8" to 112'10" for the installation of three six-foot wireless communication antennas. The proposed antennas will be installed at a height not to exceed 113 feet on the top of the existing utility structure. Each antenna panel measures approximately six feet tall by one foot wide. A 9' 4" x 13' 4" equipment shelter approximately six feet tall located directly under the existing tower will contain associated equipment. The equipment shelter will be enclosed by six-foot redwood fence that is consistent with the existing fencing on the property.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act. The Environmental Quality Act Section 15303 class 3 exemption consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The number of structures described in this section are the maximum allowable on any legal parcel.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC) in that wireless communication antenna may be allowed with a Conditional Use Permit in R-1-8 Residential zoning districts which conform to the designation.

ANALYSIS

The primary issue analyzed is conformance to Council Policy 6-20, Land Use Policy for Wireless Communications Antennas, which provides criteria for siting such facilities including location, setbacks from residential uses, and parking.

Council Policy for Wireless Communications Antennas

The City of San Jose may allow installation of wireless communication antenna with a Conditional Use Permit to ensure such projects conform to the City requirements and are compatible with the surrounding neighborhood.

The proposed project will co-locate three wireless communication antennae and associated equipment on an existing PG&E tower in a corridor for high-tension power lines exceeding 200 kilovolts. City Policy encourages co-location of new antenna or existing structures whenever possible

The project will provide amenities to offset the potential visual impacts associated with the project. Although PG&E's own requirements prevent the applicant from providing landscaping around the tower as required by Council policy, the applicant is housing the equipment shelter within a redwood fenced enclosure that is consistent with the perimeter fencing on the property. The applicant shall also contribute two 24-inch box trees to Our City Forest. Consistent with Council policy, the proposed project will not eliminate required parking.

The Council Policy requires building mounted antennas to be located to minimize visual impacts and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennas are collocated on an existing PG&E tower that has existing overhead service

lines. Although visible, the antennas will be painted to match the existing color of the utility tower and will not significantly add to the visual impacts created by the existing tower and overhead service lines on the site.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The project proposes the installation of three wireless communication antennae on a PG&E tower and placement of associated equipment cabinet in a fenced enclosure. The tower is located in a PG&E right-of-way at the intersection of Fallingtree Drive and Flickinger Road.
5. The top of the wireless communication antennae will be located at a height not to exceed 113 feet on a PG&E tower.
6. One coaxial cable, routed down the tower to underground conduit, will connect the antennae to the new equipment cabinets located in a fenced enclosure under the tower.
7. The antennae will be painted to match the existing structure to minimize the visual impacts created by existing utility poles and overhead service lines on the site.
8. The project does not reduce the existing on-site parking.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

5. The proposed project appropriately locates wireless communication antennae in an existing PG&E corridor for high-tension lines exceeding 200 kilovolts.
6. The proposed project will not eliminate parking.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Metro PCS Inc. PG&E Brooktree" dated January 17, 2002 on file with the Department of City Planning and Building and to the San Jose Building Code (San Jose Municipal Code, Title 24)
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
9. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 01-11-100 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
11. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
12. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
13. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
14. **Landscaping Mitigation.** Applicant shall contribute two 24-inch box trees to Our City Forest or the equivalent in fees to be used for tree planting.
15. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
16. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
19. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PSC antennas for other providers. Future collocation that does not increase the height of the utility structure by more than seven feet may be permitted through a permit adjustment at the discretion of the Planning Director.
20. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.

21. **Time Limit.** This permit shall expire five years after the date of approval. Renewal of the use through a subsequent Conditional Use Permit shall include a compliance review and an evaluation of the operation approved under the present permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Building Division (2)

Engineering Services

Tom McAuliffe, Metro PCS 1080 Marina Village Parkway 4th Floor Alameda CA 94501

Pacific Gas & Electric, Robert Schlegel, 77 Beale Street, San Francisco, CA 94105

Attachments

Location Map

Exemption

Council Policy

Plan Set

207-10/CG: